

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION**

UNITED STATES OF AMERICA	§	
	§	
v.	§	CASE NO. 7:08-CV-249
	§	
0.27 ACRES OF LAND, MORE OR LESS,	§	TRACT NO.
SITUATED IN STARR COUNTY, TEXAS; AND	§	RGV-RGC-2030
ENCARNACION J. RODRIGUEZ, ET. AL.,	§	RGV-RGC-2047

UNITED STATES OF AMERICA	§	
	§	CASE NO. 7:08-CV-349
v.	§	
	§	TRACT NO.
0.95 ACRES OF LAND, MORE OR LESS,	§	RGV-RGC-2018
SITUATED IN STARR COUNTY, TEXAS;	§	
AND NOE RODRIGUEZ, SR., ET AL.,	§	

**UNITED STATES' RESPONSE TO THE COURT'S ORDER
REQUESTING STATUS UPDATE**

COMES NOW the United States of America ("United States"), and files this response to the District Court's October 17, 2018 Order to inform the Court on the status of the case:

PROCEDURAL BACKGROUND

A. Civil No. 7:08-cv-249 Proceedings

On August 8, 2008, the United States filed Civil Action No. 7:08-cv-249, condemning a fee simple interest in 0.27 acres, more or less, in Starr County, Texas—identified as Tract RGV-RGC-2030—for the border fence project. On August 28, 2008, the United States deposited \$5,000.00 into the Court's registry as its estimated just compensation for Tract RGV-RGV-2030.¹

¹ See 40 U.S.C. § 3114(b) ("On filing the declaration of taking and depositing in the court, to the use of the persons entitled to the compensation, the amount of the estimated compensation stated in the declaration—(1) title to the estate or interest specified in the declaration vests in the Government; (2) the land is condemned and taken for the use of the Government; and (3) the right to just compensation for the land vests in the persons entitled to the compensation.").

[Doc. No. 4, in Civil No. 7:08-cv-249]. At the time of taking, the United States believed that Encarnacion and Fidela Rodriguez owned Tract RGV-RGC-2030. [Doc. No. 2-2, at 14, in Civil No. 7:08-cv-249].

On December 24, 2008, the United States and Encarnacion and Fidela Rodriguez filed their Agreement Concerning Just Compensation and Agreed Motion for Disbursement stating therein, among other things, that title examination results and metes and bounds surveys had not yet been completed. [Doc. No. 7 & 8, in Civil No. 7:08-cv-249]. On December 29, 2008, the Court issued an Agreed Order to Disburse Funds, ordering that the sum of \$5,000.00, plus accrued interest, be disbursed to Encarnacion and Fidela Rodriguez. [Doc. No. 9, in Civil No. 7:08-cv-249].

The United States filed status reports in these cases between 2010 and 2013. On July 21, 2010, the United States' status report explained that the United States and the landowners had settled the case. [Doc. No. 15, in Civil No. 7:08-cv-249]. However, the case remained open pending the filing of an Amended Declaration of Taking ("ADT") to clarify the description of the property taken. [*Id.*]. On October 12, 2012, the United States and Encarnacion Rodriguez filed a joint status report, explaining that the United States had not yet finalized its title commitment, land survey, and fence alignment in order to file the ADT. [Doc. No. 20]. On August 29, 2013, the United States filed a supplemental status report, explaining that it could not yet predict when the ADT would be filed due to delays in obtaining the final surveys and title work for the subject property. [Doc. No. 22, in Civil No. 7:08-cv-249].

On February 21, 2017, the United States filed its ADT and Amended Complaint to: (a) clarify that based on survey and title examination results, acquired Tract RGV-RGC-2030 was not wholly within the larger parcel owned by Encarnacion and Fidela Rodriguez, and thus Tract RGV-RGC-2030 was separated into two tracts known as RGV-RGC-2030 and RGV-RGC-2047; (b)

clarify that the estate taken for acquired Tracts RGV-RGC-2030 and RGV-RGC-2047 did not include water distribution and drainage systems; and (c) add as defendants all parties identified as having an interest in acquired Tract RGV-RGC-2047, based on final title examination results. [Doc. No. 25, at 1-2, in Civil No. 7:08-cv-249]. As a result, while Tract RGV-RGC-2030 was confirmed as owned by Encarnacion and Fidela Rodriguez, the title examination discovered at least 38 new parties (*i.e.*, the heirs of Alfredo Rodriguez, Sr.) who may have an interest in Tract RGV-RGC-2047. [Doc. No. 25-1, at 17-23, in Civil No. 7:08-cv-249].

Over the last two years, many of the new parties having an interest in Tract RGV-RGC-2047 have executed waivers of service. [Doc. Nos. 27-57, in Civil No. 7:08-cv-249].

B. Civil No. 7:08-cv-349 Proceedings

On November 26, 2008, the United States filed its Declaration of Taking and Complaint in Condemnation in Civil Action No. 7:08-cv-349, condemning a fee simple interest in 0.95 acres of land, more or less, in Starr County, Texas—identified as Tract RGV-RGC-2018—for the border fence project. [Doc. No. 1 & 2, in Civil No. 7:08-cv-349]. On December 4, 2008, the United States deposited \$7,900.00 into the Court’s registry as its estimated just compensation for Tract RGV-RGV-2018. [Doc. No. 4, in Civil No. 7:08-cv-249]. On December 18, 2008, the United States deposited an additional \$7,100.00 into the Court’s registry, increasing the estimated just compensation on deposit in the Court’s registry to \$15,000.00 for Tract RGV-RGV-2018. [Doc. No. 9, in Civil No. 7:08-cv-249]. The United States identified the owners of Tract RGV-RGC-2018 as the Heirs of Alfredo Rodriguez. [Doc. No. 2-2 at 14-15, in Civil No. 7:08-cv-349].²

² On October 10, 2012, Civil. No. 7:08-cv-054 (member case) was consolidated into 7:08-cv-349 (lead case) because both tracts involved the same parcel of land and common ownership, with the only difference being the estate taken. Specifically, Civil. No. 7:08-cv-054 involved a temporary (now expired) 180-day right-of-entry access easement and Civil No. 7:08-cv-349 involved a fee taking of the same land from the same owners.

On October 11, 2012, the United States and Roberto Rodriguez filed a joint status report explaining that many of the Heirs of Alfredo Rodriguez, Jr. had signed an “Offer to Sell” agreement, and that the amount requested had been deposited into the Court’s registry [Doc. No. 47]. However, the agreement could not yet be finalized until the United States finalized its survey and title examination results to confirm the identify of the landowners. [*Id.*].

On November 9, 2016, the United States filed its Amended Declaration of Taking and Complaint in Condemnation in Civil No. 7:08-cv-349 to: (a) clarify the description and plat of the land acquired based on final surveys; (b) clarify that the estate taken for acquired Tracts RGV-RGC-2018 did not include water distribution and drainage systems; and (c) add as defendants all parties identified as having an interest in acquired Tract RGV-RGC-2018, based on final title examination results. [Doc. No. 50 at 2-3, in Civil No. 7:08-cv-349].

C. Consolidation and Subsequent Proceedings

On October 26, 2018, the United States filed an unopposed motion to consolidate Civil No. 7:08-cv-249 and Civil No. 7:08-cv-349 because title examination results indicate that the Heirs of Alfredo Rodriguez own the larger parcels of Tracts RGV-RGC-2047 and RGV-RGC-2018. [Doc. No. 60].³ On October 29, 2018, this Court granted the motion to consolidate, thereby consolidating both cases under consolidated Civil No. 7:08-cv-249. [Doc. No. 61].

On November 5, 2018, the United States and landowners Encarnacion and Fidela Rodriguez filed their Joint Motion to Close Case as to Tract RGV-RGC-2030 Only. [Doc. No. 62]. The Court granted this motion on November 6, 2018. [Doc. No. 63].

³ All ECF references to documents filed after October 26, 2018 refer to Consolidated Civil No. 7:08-cv-249.

On November 7, 2018, the United States filed its Joint Motion to Dismiss Altex Corporation, explaining therein that Altex's easement (if it still exists) is not affected by this condemnation proceeding. [Doc. No. 64]. This motion remains pending.

ANTICIPATED NEXT STEPS

The United States is taking the following steps to resolve this case:

(1) Continue to provide support via power of attorney forms and notary services to assist the 38 identified (and *pro se*) Heirs of Alfredo Rodriguez, Sr. in selecting family members of their choice to represent their interests in case. Alfredo Rodriguez died intestate in 1980, leaving seven children and all but one of these seven children have since passed away. In other words, the living heirs of Alfredo Rodriguez, Sr. are primarily his grandchildren and some great grandchildren. Thus, the United States has requested that these Heirs select at most seven representatives to represent the different "branches" of Alfredo Rodriguez, Sr.'s progeny, in order that the Parties can effectively begin just compensation negotiations.

(2) Obtain disclaimers, or file motions to dismiss if necessary, to dismiss the pipeline and utility easement owners identified as possible interested parties because (a) the United States' taking was subject to such existing easements, and (b) there does not appear to be any evidence that this condemnation proceeding has affected these easements.

Respectfully submitted,

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By: *s/Christopher D. Pineda*

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CERTIFICATE OF SERVICE

I certify that on November 9, 2018, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, and that our office will send a copy of this document on November 9 and 13th, 2018 via regular mail to all parties who have made an appearance and/or for whom the United States has contact information.

s/ Christopher D. Pineda
CHRISTOPHER D. PINEDA
Assistant United States Attorney